IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2734 of 2006
to
FIRST APPEAL No. 2742 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? No

2 To be referred to the Reporter or not ? No

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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SPL.LAQ OFFICER - Appellant(s)
Versus
DIVALIBEN WD/O MOHANBHAI MOTIBHAI & 1 - Defendant(s)

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Appearance :
MR SS PATEL, AGP for Appellant(s) : 1,
MR AJ PATEL for Respondent(s)-Claimant(s)

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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 08/08/2006

ORAL JUDGMENT (Per :HON'BLE SMT.JUSTICE ABHILASHA KUMARI)

1. Admitted. Mr.A.J.Patel, learned counsel, waives service of notice on behalf of the claimant/ claimants in each Appeal. Mr.S.S.Patel, learned Assistant Government Pleader, states at the Bar that the interest of the appellant and that of the respondent No.2 in each Appeal is identical and is not in conflict at all. On the basis of this statement, this Court is of the opinion that it is not necessary to serve the notice of admission of Appeals upon the respondent No.2. Having regard to the facts of the case, all these Appeals are taken up for final hearing today.

2. The abovenumbered Appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and

award dated December 11, 2003, rendered by the 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural), Navrangpura in Land Reference Case Nos.582 to 590 of 1999, by which, the Reference Court has awarded compensation at the rate of Rs.31/- per sq.mt. over and above the compensation awarded by the Special Land Acquisition Officer to the claimants at the rate of Rs.1.05/- and Rs.0.70/- for their acquired irrigated and non-irrigated lands respectively which were situated in village Hadmatala.

3. A proposal was received by the State Government from the Executive Engineer, Narmada Project, Division No.2/6, Botad, to acquire the lands of village Hadmatala, Taluka: Dhandhuka, District: Ahmedabad, for the public purpose of construction of Narmada canal under the Narmada Project, Unit-3. On scrutiny of the said proposal, the State Government was satisfied that the

lands of village Hadmatala were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued, which was published in the official gazette on July 12, 1994. The land owners were served with notices and they filed their objections against the proposed acquisition and after considering the said objections, a report was submitted by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Hadmatala which were specified in the Notification published under Section 4 of the Act were required for the public purpose of construction of Narmada canal. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on September 27, 1995. The interested persons were thereafter served with the notices under Section 9 of the Act

for determination of amount of compensation payable to them. After considering the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.1=05 ps. per sq.mt. for irrigated lands and Rs.0.70 ps. per sq.mt. for non-irrigated lands. The claimants had claimed Rs.50/- per sq.mt. for their acquired lands. The claimants were, therefore, of the opinion that the offer of compensation made by the Special Land Acquisition Officer was highly inadequate. They submitted applications in writing requiring the Special Land Acquisition Officer to refer the matters to the Court for the purpose of determination of just compensation payable to them. In this background, References were made to the District Court, Ahmedabad (Rural) at Navrangpura, which were numbered as referred to above.

4. On behalf of the claimants, Dharamsinh

Chikabhai, who was one of the claimants and land owner of survey Nos.30 and 26/2, deposed at Ex.31. He stated in his testimony that the acquired lands were fertile and had irrigation facilities by way of wells and bore-wells and that the farmers of village Hadmatala were cultivating three crops in a year and earning net agricultural income of Rs.30,000/- per Vigha per year. He further stated that village Hadmatala was a developing village and facilities like electricity, water, Pucca road, cooperative society, Bank, Post Office, primary school, S.T. Bus service, etc. were available in the said village. This witness further stated that previously, the lands of village Moti Vavdi were acquired for the same purpose, i.e. for construction of Narmada canal and References having been preferred in those cases, additional compensation at the rate of Rs.27/- per sq.mt. was awarded by the Reference Court. The witness categorically stated that the previously acquired lands of

village Moti Vavdi and the lands which are subject matter of acquisition in the present case were adjoining to each other and boundaries of village Moti Vavdi and village Hadmatala were contiguous to each other. The witness for the claimant produced judgment and award rendered by the learned 2nd Extra Assistant Judge and Special Judge (LAQ), Ahmedabad (Rural) District Court at Navrangpura, in Land Acquisition Case No.2417 of 1996 and cognate matters decided on January 18, 2003, at Ex.30. The witness for the claimant further deposed that the lands previously acquired from village Moti Vavdi were also acquired for the same public purpose as the lands acquired in the present case and that both the villages were very near to each other and the lands were also very near to each other. The witness further stated that the lands of village Hadmatala were more fertile than the lands of village Moti Vavdi. In cross-examination by the learned advocate for the appellant, this

witness denied the suggestion that no irrigation facilities were available to the acquired lands or that village Moti Vavdi was situated ten kilometers away from village Hadmatala. The said witness was also cross-examined by learned cousnel for the opponent No.2 but nothing fruitful could be elicited during his cross-examination to dislodge his testimony.

5. The claimants produced documentary evidence such as village form No.7/12 at Ex.16 to 28, apart from the judgment and award in Land Acquisition Case No.2417 of 1996 relating to acquired lands of village Moti Vavdi at Ex.30. The appellant and the acquiring body also produced documentary evidence such as five years' index of sale deed at Ex.34, average information statement at Ex.35 and Severance Register at Ex.36. No witness was examined by the appellant or the acquiring body in support of their case.

6. On appreciation of the evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of village Moti Vavdi, produced by the claimants furnished good guidance for determining the market value of the lands acquired in the instant case from village Hadmatala. Placing reliance on the previous award, the Reference Court, vide judgment and award dated December 11, 2003, has held that the claimants are entitled to compensation at the rate of Rs.31/- per sq.mt. for their acquired lands over and above the compensation awarded by the Special Land Acquisition Officer, giving rise to the instant Appeals.

7. This Court has heard Mr.S.S.Patel, learned Assistant Government Pleader, for the appellants in each Appeal and Mr.A.J.Patel, learned counsel appearing for the claimant/ claimants in each Appeal, at great length

and in detail. This Court has also considered the documentary evidence produced by the learned counsel for the parties for perusal of the Court.

8. On perusal of the testimony of witness Dharamsinh Chikabhai examined on behalf of the claimants, it is evident that although he has stated that the acquired lands were fertile and having adequate irrigation facilities and that the farmers were earning the net agricultural income of Rs.30,000/- per Vigha annually from the sale of agricultural produces, it is relevant to notice that enhanced compensation has not been claimed on the basis of agricultural yield and neither has any evidence been adduced regarding sale of such agricultural produces and the income fetched therefrom. The only relevant piece of evidence which has been relied upon by the Reference Court is the judgment and award of the Reference Court pertaining to the acquisition of lands

from the neighbouring village Moti Vavdi which has been produced at Ex.30. It has been stated by the witness deposing on behalf of the claimants that village Hadmatala and Moti Vavdi are adjoining to each other and that the lands of village Moti Vavdi were similar to the lands of village Hadmatala in all respects. This assertion made by the said witness of the claimants has not been shaken by the learned counsel for the appellant or the acquiring body in his cross-examination. In previous judgment and award of Reference Court on which reliance is placed by the claimants, Notification under Section 4(1) of the Act was published on February 10, 1993. In the said case, the Land Acquisition Officer awarded Rs.1.50 ps per sq.mt. and Re.1/- per sq.mt. for irrigated and non-irrigated lands of village Moti Vavdi respectively. On Reference being made, the District Court awarded additional compensation at the rate of Rs.27/- per sq.mt.

9. On re-appreciation of the evidence adduced by the parties, this Court is of the opinion that the Reference Court was justified in placing reliance on the previous award of the Reference Court pertaining to the lands of village Moti Vavdi for the purpose of determining the market value of the lands acquired from village Hadmatala. It is a settled proposition of law that the previous award pertaining to the lands situated in an adjoining or same village, which are comparable to the lands in question, can be safely relied upon while determining the market value of the lands acquired from adjoining village if the award has attained finality. It is not in dispute that the previous award of the Reference Court relating to the lands of village Hadmatala has attained finality. On re-appreciation of the facts of the case, this Court finds that correct principles of law have been applied by the Reference Court to the proved facts and to this extent, the impugned judgment

and award does not deserve to be interfered with.

10. In the present case, the Notification under Section 4(1) of the Act was published on July 12, 1994 whereas in the previous judgment and award pertaining to the lands of village Moti Vavdi, on which reliance is placed, was published on February 10, 1993. Therefore, there is a difference of about one year and five months between the dates of two Notifications under Section 4(1) of the Act in both cases. In the instant case, the Reference Court has held that the claimant/ claimants are entitled to escalation in the price of land at the rate of 10% for each year and has awarded additional compensation at the rate of Rs.31/- per sq.mt. over and above the compensation already awarded by the Special Land Acquisition Officer. Mr.S.S.Patel, learned Assistant Government Pleader, has submitted that even if reliance placed upon

the previous judgment by the Reference Court is upheld, there is no manner of doubt that for the lands acquired from village Moti Vavdi which is produced at Ex.30, additional compensation at the rate of Rs.27/- per sq.mt. was awarded by the Reference Court, taking into account the appreciation in the price of land at the rate of 10% per year, and therefore, the claimants in the instant case would be entitled to total compensation at the rate of Rs.30.80 ps. and not to additional compensation at the rate of Rs.31/- per sq.mt., as awarded by the Reference Court by the impugned judgment and award. The calculation of compensation made by the learned Assistant Government Pleader on the basis of the previous award is not disputed by the learned counsel for the claimants. Therefore, this Court finds substance in the submission advanced by Mr.S.S.Patel, learned Assistant Government Pleader and the Appeals will have to be partly allowed and the impugned judgment and

award will have to be modified to this extent.

11. For the foregoing reasons, the Appeals are partly allowed and it is held that the claimants are entitled to additional compensation at the rate of Rs.29.75 ps. per sq.mt., i.e. in all compensation at the rate of Rs.30.80 ps. per sq.mt. and not to additional compensation at the rate of Rs.31/- per sq.mt. as awarded by the Reference Court. The impugned judgment and award of the Reference Court is modified to this extent. No other finding arrived at by the Reference Court is interfered with by this Court. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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